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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/512,414	10/25/2004	Morris Zelkha	ZELKHA5	6667

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BROWDY AND NEIMARK, P.L.L.C.
624 NINTH STREET, NW
SUITE 300
WASHINGTON, DC 20001-5303

EXAMINER	
PRATT, HELEN F	

ART UNIT	PAPER NUMBER
1761	

MAIL DATE	DELIVERY MODE
05/02/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/512,414	ZELKHA ET AL.	
	Examiner	Art Unit	
	Helen F. Pratt	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-17 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-17 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 7 is rejected under 35 U.S.C. 102(b) as being anticipated by Tanglertpaibul (XP 0020434).

Tanglertpaibul et al. disclose a process as in claim 7 of making a tomato product using canned juice which was centrifuged to produce a clear serum, and pulp. The serum was concentrated in a kettle to various brix concentrations (page 318, col. 2. 2nd para. Under Materials and methods). The amount of pulp added to the serum can be from zero to 40, and the amount of serum starts at zero. Therefore, a ratio of 1:1 to 1:3 is shown in figure 1, page 319.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tanglertpaibul et al. (XP 0020434) as applied to claim 7 above, and further in view of Noyes (2,419,909).

Claim 8 further requires combining tomato pulp with tomato juice at a particular ratio of 1:1 to 1:3. Noyes discloses removing pulp from ripe tomatoes, to leave juice, concentrating the juice and then combining it with the pulp (col. 5, lines 24-31, col. 6, lines 1-14). No particular concentration is seen. However, as Tanglertpaibul et al. disclose the claimed ratio, it would have been obvious to use the known ratio of Tanglertpaibul to make the tomato product.

Claim 9 further requires separating the serum from the strained tomatoes until the pulp and serum ratio is as claimed. However, if it is known to combined pulp and serum, then it would have been obvious to separate to the same ratio since the ratio is known.

Tanglertpaibul et al. disclose centrifuging as in claim 10 (page 318, 3rd para. from top).

The flavoring agent has been shown as in claim 14 since the process of making it has been shown.

Claims 1-6, 11-13, 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over the above references as applied to the above claims, and further in view of Succar et al. (US 2006/0263498 A1) and Trifiro et al.(XP 008021475) and Cooper (2,145108).

The limitations of claim 1 read on tomato juice freshly squeezed from a tomato, since the Brix are disclosed as similar to a raw tomato. Succar et al. disclose that it is known to decant tomato juice from tomatoes (fig. 6B down to tomato stream juice). Trifiro discloses separating serum and pulp by centrifugation using samples with

different insoluble solids contents and mixing serum and pulp in various ratios (abstract on page 139. As it is known to use various amounts of pulp from zero to 100%, it would have been obvious to choose various combinations of pulp and serum to make a particular viscosity as in claims 1-5. The serum is considered to be tomato juice as in claim 5, since it has been squeezed from the tomato. The pulp is also seen to have been crude, as nothing has been done to it as in claims 6 and 15 (abstract). As nothing has been removed from the juice of Succar et al. or the tomato samples of Trifiro et al. , the lycopene content and viscosity and brix is seen to have been similar. Cooper discloses that it is known to press tomatoes to remove juice to make a pulp with a soluble solids of 5.5 to 6 , which would have a similar Brix as in claims 2 and 3 (page 1, col. 2, lines 4-19). Also, it would have been within the skill of the ordinary worker to vary the proportions of pulp and serum to arrive at the claimed limitations since samples made of various amounts of pulp and serum were used as in . Therefore, it would have been obvious to make a product as disclosed by Succar or Trifiro et al.

Claim 11 is to a flavoring agent, claim 12, a texturing agent and claim 13 a source of lycopene, all of which would result since the composition is known as above. As the product has been shown as in claims 16 and 17, the product would have reduced caloric value, particularly since it is known to vary the amount of pulp in the composition as shown by the references. Therefore, it would have been obvious to make various products using the composition as disclosed by the combined references.

INFORMATION DISCLOSURE FORM

Applicants should furnish a translation of Trifiro et al. XO0080214JF.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 4-27-07

H. Pratt
HELEN PRATT
PRIMARY EXAMINER